

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JAMES PETTUS,

Plaintiff,

v.

9:08-CV-0883  
(TJM)

ROSOTTI, Correctional Officer, Great Meadow  
Correctional Facility, *et al.*,

Defendants.

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APPEARANCES:

JAMES PETTUS  
03-R-3597  
Great Meadow Correctional Facility  
Box 51  
Comstock, NY 12821  
Plaintiff, *pro se*

THOMAS J. MCAVOY  
Senior United States District Judge

**DECISION and ORDER**

Plaintiff James Pettus commenced this action by filing a *pro se* civil rights complaint. Dkt. No. 1. In his complaint, plaintiff alleged that defendant Rosotti had used excessive force on him. Plaintiff alleged that the event occurred on September 25, 2008. *Id.* However, this action was filed on August 18, 2008, over one month prior to the alleged event occurring. Accordingly, by Order of this Court filed on December 10, 2008, plaintiff was directed to submit an affidavit, sworn to under penalty of perjury, stating the date of the incident with defendant Rosotti that serves as the basis for this action.<sup>1</sup>

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<sup>1</sup> The Court is well aware of plaintiff's litigation history, and the fact that he presently has amassed far more than "three strikes." *Cf.* 9:06-CV-0152, Dkt. No. 24.

Because plaintiff had not submitted the required affidavit and the time to do so had expired, by Decision and Order filed on January 15, 2009, the Court warned plaintiff that if he failed to submit the required affidavit **on or before January 31, 2009**, **this action would be dismissed**, without prejudice. Plaintiff has wholly failed to comply with the prior Orders of this Court.

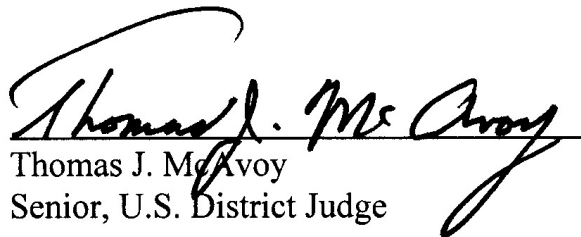
WHEREFORE, it is hereby

ORDERED, that this action is **dismissed** without prejudice, and it is further

ORDERED, that plaintiff's application to proceed *in forma pauperis* (Dkt. No. 2) is **denied**, and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on plaintiff.

Dated: February 4, 2009

  
Thomas J. McAvoy  
Senior, U.S. District Judge